Supreme Court, U.S.
FILED
001495 JAN 12 2001
OFFICE OF THE CLERK

No._____

In The
Supreme Court of the United States

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ROCK ABOU-SAKHER,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

~~~~~O~~~~~

On Petition For A Writ Of Certiorari
To The Tennessee State Supreme Court

~~~~~O~~~~~

PETITION FOR A WRIT OF CERTIORARI

Rock Abou-Sakher, Pro Se,
11493 Hurricane Creek Road,
McEwen, Tennessee 37101,
(931) 582-3854,
For Petitioner.
~~~~~

QUESTIONS PRESENTED

Question One:

Whether that part of the Tennessee law, under which the Petitioner was convicted on two counts of Criminal Trespass, T.C.A., Section 39-14-405(b)(3) is, by its wording, overbroad and unclear to the extent that it allows for **no defense** to a criminal charge brought under that State Law and thereby results in a direct violation of equal rights under the Fourteenth Amendment and to the rights to due process as both of these rights are guaranteed by the Constitution of the United States of America.

Question Two:

Whether a State Court can attach a Criminal Record to a person who is a defendant in a jury trial in which there is no record, of the trial proceedings, on which to base an appeal, without the denial of due process?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Rock Abou-Sakher, petitioner, and the State of Tennessee, respondent.

JURISDICTION

This being a matter that questions the validity of Tennessee Code 39-14-405, being more specifically 39-14-405(b)(3), on the ground of it being repugnant to the Constitution and Amendments of the United States, the jurisdiction will be under 28 U.S.C., Section 1257(a), and under 28 U.S.C., Section 1254, and U.S.C.A., Section 1981; 42 U.S.C.A., Section 1982; and, as it was a publicly owned facility, 42 U.S.C.A., Section 1983.

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TABLE OF AUTHORITIES

Wright v. State of Ga., Ga. 1963, 83 S.Ct.1240, 373 U.S. 284, 10 L.Ed.2d 349;

Wright v. State, 1963, 131 S.E.2d 851, 219 Ga. 125;

Shuttlesworth v. City of Birmingham, Ala, Ala 1963, 83 S.Ct. 1130, 373 U.s. 262, 10 L.Ed 2d 335;

Lombard v. State of La., La. 1963, 83 S.Ct. 1122, 373 U.S. 267, 10 L.Ed 2d 338;

Peterson v. City of Greenvill, S.C., 1963, 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed 323;

Johnson v. State of Va., 1963, 83 S.Ct. 1053, 373 U.S. 61, 10 L.Ed.2d 195;

Boynton v. Com. Of Va., 1960, 81 S.Ct. 182, 364 U.S. 454, 5 L.Ed 2d 206.

FACTS OF THE CASE

The aledged trespass property in question was the Humphreys County, Tennessee, Public Airport. This is where the petitioner had his private plane based. The petitioner went to the airport to make a flight in his plane. The petitioner then called the weather service from the airport and was told that the weather was unsettled and that he should wait a while before attempting to safely fly out of the airport.

The petitioner, being a pilot, went to the pilot's lounge and sat quietly playing a game of solitare with cards furnished by the airport for use by the pilots in the pilot's lounge.

The airport manager then came into the pilot's lounge and told the petitioner to leave the property. The airport manager told the petitioner that the petitioner had **"no legitimate reason for being at the airport."** The petitioner refused to leave the airport and was promptly arrested for criminal trespass.

This same scene was repeated a few days later and the petitioner was once again arrested for criminal trespass.

ARGUMENT

Tennessee Code 39-14-405 is a law that, in order to defend against a charge of Criminal Trespass in Tennessee, requires a citizen to give up the rights to due process and to equal protection, as these rights are guaranteed under the Constitution of the United States. This state law is repugnant to the ideals and spirit of the Constitution.

T.C.A. 39-14-405 reads as follows:

> (a) A person commits criminal trespass who, knowing the person does not have the owners effective consent to do so, enters or remains on property, or a portion thereof. Knowledge that the person did not have the owners effective consent may be inferred where notice is given by:

(1)Personal communication to the person by the owner or by someone with apparent authority; or

(2) Fencing or other enclosure obviously designed to exclude intruders; or

(3) Posting reasonably likely to come to the attentionof intruders.

(b) It is a defense to prosecution under this section that:

(1) The property was open to the public when the person entered and remained;

[2] The person's conduct did not substantially interfere with the owner's use of the property; **and**

(3) **The person immediately left the premises upon request.**

(c) For purposes of this section "enter" means intrusion of the entire body.

(d) Criminal Trespass is a Class C Misdemeanor. [Acts 1989, ch. 591, Sec. 1] (all emphasis mine.)

The 23rd Judicial District Circuit Court of Humphreys County, Tennessee; the Tennessee Court of Appeals; and the Tennessee Supreme Court have each ruled that **all three** of the conditions of the affirmative defense must be met

to establish an affirmative defense. Therein lies the problem. The Tennessee Courts have decided that in order to present an affirmative defense the person must have ***"immediately left the premises upon request."***

The law as presently worded and interpreted by the Tennessee Courts says that anyone, notwithstanding that the property was open to the public, and notwithstanding that the person's conduct did not substantially interfere with the owner's use of the property, **must immediately leave the property upon request.**

The trial court Judge said, **in the jury instructions,** that if the jury found that the defendant did not leave the property immediately upon request, the defendant **must** be found guilty of Criminal Trespass.

Nothing, as to whether the person had a legal right to be on the property; nothing as to whether the property was open to the public; and, nothing as to whether the person's conduct substantially

interfered with the owner's use of the property, was to be considered.

Can a state law that, standing alone, requires a person to leave a public property immediately upon request, override that person's Constitutionally guaranteed rights of equal protection under the law, and deny the person's Constitutional right to equal access to that said public property?

Do judicial instructions requiring a jury to return a guilty verdict upon the sole finding that the person did not immediately leave the property upon request, notwithstanding the person's Constitutionally protected legal right to be on the property, deny the due process requirement of fairness, and deny the equal protection of the laws as guaranteed?

This law requires a person to leave a property upon request, even if the person has a Constitutionally Guaranteed legal right to be on the property.

The State Criminal Court and Appeals Courts erred when they failed to consider that their interpretation of the wording of this law left no defense except and unless the person "immediately left the premises upon request."

The Trial Court and the Criminal Courts of Appeal each construed the conjunction "and" and not the conjunction "or" was appropriate to the wording of this law.

However, if the conjunction "and" is appropriate, then regardless of meeting the conditions of (1) and (2), the person must also meet condition (3) to present an affirmative defense to the charge. That is to say, the person must have **"...immediately left the premises upon request."** It is upon this requirement that this appeal will be made if this Petition is granted. The law, as presently worded, allows an owner (in this case a manager since it was a public airport and the owner is the taxpayer) to, for any reason, or for no reason at all, ask a person to leave and that person must leave or be found guilty,

automatically guilty, of criminal trespass.

This is clearly unconstitutional, since the person had a legal right to be on those premises, which were open to the public and where the person's conduct did not substantially interfere with the owner's/manager's use of the property, as in this instant case.

A law worded as this one is worded, interpreted, and applied by the Tennessee Courts would allow the exclusion of a person because he is Black, or of Arabic Heritage.

A law worded as this law is worded would allow an airport manager to deprive a person from the use and enjoyment of a public facility solely because the manager did not like the person.

The manager is nowhere, **in this law**, required to have a legitimate reason,

or any reason at all, for requesting the person to leave the property.

The testimony in the trial court would support, if there was a record of the testimony in the trial court, the facts that (1) the airport was open to the public and (2) that the petitioner's conduct (playing a game of solitaire in the pilot's lounge) did not substantially interfere with the intended use of the property and that the petitioner did meet the first two conditions.

It is admitted that the Appellant did refuse to **"leave immediately upon request."** The Petitioner says that if a property is open to the public and if a person's conduct does not substantially interfere with the intended use of the property, he cannot be required to leave;

that he has the right, equal to any other's right, to be on that property; especially if the property is, as in this case, publicly owned.

This law, as presently interpreted and applied by the Trial Court and the Courts of Appeals,

allows both the owner of a privately owned business, and the manager of a publicly owned facility, both of which are open to the public, to exclude persons because of their color or National Heritage or for any other reason that strikes their respective fancies.

Previous court decisions supporting the petitioner's argument are as follows: Wright v. State of Ga., Ga. 1963, 83 S.Ct. 1240, 373 U.S. 284, 10 L.Ed.2d 349; Wright v. State, 1963, 131 S.E.2d 851, 219 Ga. 125; Shuttlesworth v. City of Birmingham, Ala, Ala 1963, 83 S.Ct1130, 373 U.s. 262, 10 L.Ed 2d 335; Lombard v. State of La., La. 1963, 83 S.Ct. 1122, 373 U.S. 267, 10l Ed 2d 338; Peterson v. City of Greenvill, S.C., 1963, 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed 323; Johnson v. State of Va., 1963, 83 S.Ct. 1053, 373 U.S. 61, 10 L.Ed.2d 195; Boynton v. Com. Of Va., 1960, 81 S.Ct. 182, 364 U.S. 454, 5 L.Ed 2d 206.

Laws in Virginia, South Carolina, Alabama, Georgia, and Louisiana, virtually identical to this Tennessee law,
have all been ruled, by the United States Supreme Court, to be invalid under the Constitution.

An Airport Authority member once told the petitioner that he would get no consideration in the use and services of the airport because the petitioner had once sued the Airport Authority and Humphreys County.

This behavior puts a chill on a citizen's right to approach the Courts to redress a grievance he has with a governmental agency. The petitioner was not only arbitrarily and capriciously forced to leave the airport premises but was given a criminal record as a bonus, and this law DIRECTED that to be done.

What this law meant to say, or should have meant to say, was that if the premises were **not** open to the public **and/or** the persons conduct was such that it **did** interfere with the owners use of the premises, then: if he did not **leave immediately**

upon request, he would be guilty of criminal trespass. The law as presently written, interpreted, and applied denies any citizen a right to be on property on which he has a right to be.

This law could be used to exclude minorities from service at a drug store lunch counter. If the minorities were asked to leave and they refused, they could be arrested under this law and left with no defense to the charge.

It would not matter that the drug store lunch counter was open to the public; it would not matter that the minorities conduct did not significantly interfere with the owners use of the lunch counter; it would only matter that they refused to **leave immediately upon request.**

The fact that the trial court made no record of testimony in the trial of the petitioner underscores the Tennessee State Prosecutor's intention to deny the petitioner full due process. It was a state prosecution of a citizen and it should be the state that provides the necessary records for any

subsequent appeal. This prosecution was the state's idea and took place at the state's insistence.

CONCLUSION

This petition for a writ of certiorari to the Tennessee State Supreme Court should be granted.

Respectfully submitted,

Rock Abou-Sakher, Pro Se
11493 Hurricane Creek Rd.
McEwen, Tennessee 37101
(931) 582-3854

OATH AND VERIFICATION

I, Rock Abou-Sakher, declare under penalty of perjury pursuant to 28 U.S.C.A., Section 1746, that the foregoing information is true and correct to the best of my knowledge and belief, and this I say and attest to on this the 3rd day of MARCH, 2001.

Rock Abou-Sakher, Petitioner,Pro Se

IN THE CRIMINAL/CIRCUIT COURT OF
HUMPHREYS COUNTY, TENNESSEE

Case Number: 9484
Attorney for the State LISA C. DONEGAN
Judicial district `23
Judicial Division III
Counsel for Defendant PENNY HARRINGTON [X] Retained
State Of Tennessee
VS.
Defendant ROCK ABOU SAKHER
Date of Birth 06 / 03 / 41
Sex M
Race W
SSN 451 - 74 - 578

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment. On the 22 day of February, 1999, the defendant:
Is found: [X] guilty
Indictment: Class: 1st C [X] Misdemeanor
Offense Criminal Trespassing
Offense date 5 / 1 / 98
County Humphreys
Conviction offense Same
TCA#: 39-14-405
Sentence –imposed date 02 / 22 / 99
Conviction class: C [X] Misdemeanor
$50.00 FINE ASSESSED

Allen W. Wallace
Judge's Name
Lisa C. Donegan
Attorney for State/Signature (optional)

2-22-1999 3:05 PM
ELAINE CHOATE, CLERK
Humphreys Co. Circuit Court

IN THE CIRCUIT COURT FOR HUMPHREYS COUNTY, TENNESSEE
AT WAVERLY
STATE OF TENNESSEE

VS.

ROCK ABOU-SAKHER

JUDGMENT

On this the 22nd day of February, 1999, in this cause cam Lisa C. Donegan, Assistant District Attorney General, to prosecute on behalf of the State of Tennessee, and the Defendant in proper person and by his attorney, Penny Harrington, who being arraigned at the bar of the Court and charged on the bill of indictment with the offense of Criminal Trespassing, a Class C Misdemeanor, and for plea thereto said he is not guilty and puts himself upon the country for trial and the District Attorney General doth the like.

Thereupon, came a jury of good and lawful men and women, citizens of Humphreys County, to wit:

THELMA MOSER	VINCENT BERCIK
BAMBI CONRAD	CANNY YATES
PATRICIA ELMORE	DONALD MAYS
GEORGE BASS	MICHAIL MCLERKIN
TERESA CROWELL	CHARLES LITTLE

PATRICIA BUCHANAN STEVEN MERIDETH

Who being duly sworn according to law, and previously elected, impaneled as the law directs, to hear all the testimony and to receive the charge of the Court, and to render a verdict as the law directs, and whereupon the said jury having heard all the evidence and testimony, the plea, heretofore entered, and the argument of counsel and received their charge from the Court, upon their oaths, do say: "We find the defendant guilty as charged."

ALLEN W. WALLACE
CIRCUIT COURT JUDGE
23RD JUDICIAL DISTRICT

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1999 SESSION

STATE OF TENNESSEE,	)
	) C.C.A. NO. 01C01-9904-CC-00133
Appellee,	) M1999-00053-CCA-R3-CD
	) HUMPHREYS COUNTY
VS.	)
	) HON. ALLEN W. WALLACE,
ROCK ABOU-SAKHER,	) JUDGE
	)
Appellant,	) (Criminal trespass – 2 counts)

FOR THE APPELLANT:	FOR THE APPELLEE:
PENNY HARRINGTON	PAUL G. SUMMERS
2205 State St.	Attorney General & Reporter
Nashville, TN 37203-1850	

ELIZABETH T.
RYAN
Asst. Attorney General
425 Fifth Ave., N.
Nashville, TN 37243

DAN M. ALSOBROOKS
District Attorney
General

LISA DONEGAN
Asst. District Attorney
General
Humphreys County
Courthouse
Room 205
Waverly, TN 37185

OPINION FILED: FEB 2 2000

AFFIRMED

JOHN H. PEAY
Judge

O P I N I O N

The defendant was indicted for, and convicted by a jury of, two counts of criminal trespass. He was fined fifty dollars ($50.00) for each offense. In this direct appeal, the defendant challenges the trial court's jury instruction on the statutory defense available against a change of criminal trespass. Upon our review of the record, we affirm the trial court's judgment.

The defendant, a license pilot, was asked to leave the Humphreys County Airport by its manager. When he refused, defendant was arrested and charged. A few days later, defendant was again asked to leave the airport by the manager, and again refused to leave. Defendant was again arrested and charged. A jury subsequently convicted him of criminal trespass for each incident.

It is defense to prosecution for criminal trespass that:

> (1) The property was open to the public when the person entered and remained;
>
> (2) The person's conduct did not substantially interfere with the owner's use of the property; and

(3) The person immediately left the premises upon request.

T.C.A. § 39-14-405(b). Defendant complains that the trial judge committed reversible error because, when instruction the jury on this defense, he added the conjunction "and" at the end of subsection (1). Defendant contends that the implied conjunction at the end of subsection (1) is "or" rather than "and." Accordingly, he argues, the trial court combined two distinct defenses into one.

We disagree. The implied conjunction at the end of the first clause in a series is the same as the actual conjunction used at the end of the penultimate clause. Had the conjunction at the end of subsection (2) been "or, " then defendant would be correct. Since the conjunction used is "and," the defendant is incorrect. The trial court committed no error in verbalizing the implied conjunction.

The defendant's contentions being without merit, the judgment of the trial court is affirmed

JOHN H. PEAY, Judge

CONCUR:

GARY R. WADE, Presiding Judge

NORMA McGEE OGLE, Judge

I, Cecil Crowson, Jr., Clerk, hereby certify that this is a true and exact copy of the original opinion filed in the cause. This 25th day of Oct, 2000.

IN THE COURT OF CRIMINAL APPEALS
MIDDLE SECTION AT NASHVILLE

STATE OF TENNESSEE,	C.C.A. NO. 01C01-9904-CC-00133
Appellee,	HUMPHREYS COUNTY
VS.	NO.9484 & 9485, Below
ROCK ABOU-SAKHER,	Offense:
Appellant.	Criminal Trespass – 2 Counts
	Affirmed and Remanded.

JUDGMENT

Came the appellant, Rock Abou-Sakher, by counsel, and also came the Attorney General on behalf of the State, and this case was heard on the record on appeal from the Circuit Court of Humphreys County; and upon consideration thereof, this Court is of the opinion that there is no

reversible error in the judgment of the trial court.

It is, therefore, ordered and adjudged by this court that the judgment of the trial court is affirmed, and the case is remanded to the Circuit Court of Humphreys County for execution of the judgment of that court and for collection of costs accrued below.

Cost of appeal will be paid by the appellant, Rock Abou-Sakher, for which let execution issue.

In the event the appellant indicates the intention to file an application for permission to appeal to the Supreme Court, he may be admitted to bail in the additional amount of $5,000 (with the original bond to remain in effect), with sufficient sureties to be approved by the clerk of the trial court pending the filing and disposition of said application; and in default of such bond, he will be remanded to the Sheriff of Humphreys County.

Supreme Court – Middle Division
100 Supreme Court Building
Nashville, TN 37219-1407

Humphreys County Circuit Court
Clerk
Humphreys County Courthouse
Waverly, TN 37185

Date Printed: 10/25/2000
Notice Date: 10/25/2000
Case Style: State of Tennessee vs. Rock Abou-Sakher
Case Number: M199-00053-SC-R11-CD
Action: Issuance Date: 10/25/2000 Mandate: Court of Criminal Appeals Mandate Issued – Misd. or Felony – Opinion/Judgment Only ::
Trial Court: Humphreys County Circuit Court
Trial Court Number: 9484 9485

Mandate has issued in the above-styled appeal. The mandate consists of certified copies of the judgment, any order as to costs, and a copy of the opinion. The mandate in its entirety is remitted to the trial court clerk and signifies the end of the case. The clerk's office will not accept any filing after issuance of mandate except those requesting recall of the mandate, those related to withdrawing the record of portions thereof and those related to the assessment of costs.

VLL
C: Tennessee Department of Correction

10-27-2000 11:05 AM
ELAINE CHOATE,CLERK
Humphreys Co. Circuit Court

MANDATE

STATE OF TENNESSEE

To the Honorable Judge of the Humphreys County Circuit Court

Whereas, in our Court of Criminal Appeals, Middle Division at Nashville, it was adjudged and ordered in the cause of State of Tennessee vs. Rock-Abou Sakher appealed to our said Court that the same he remanded thereto for further proceedings and final determination therein.

These are, therefore, to require you, the Humphreys County Circuit Court as aforesaid, that you proceed with the execution of this Judgment of our said Court of Criminal Appeals by such further proceedings in your Court as shall effectuate the objects of this order to remand, and attain the ends of justice.

Witness, Cecil Crowson, Jr., Clerk of said court at office in Nashville.

Cecil Crowson, Jr., Clerk

By, Vickie L. Lane, *Deputy Clerk*